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October 11, 2007

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
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FILED/ACCEPTED

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Federal Communications Commission  
Office of the Secretary

Re: *Ex Parte* Presentation  
Request for Comment on Petition for Declaratory Ruling  
V-me Media, Inc.  
MB Docket No. 07-170

Dear Ms. Dortch:

Educational Broadcasting Corporation ("EBC"), by its counsel, respectfully submits this letter of clarification in connection with the September 24, 2007 Reply Comment of Hispanic Information and Telecommunications Network, Inc. ("HITN"). As EBC has demonstrated in its filings in this proceeding, its contractual arrangements for distribution on a DBS set-aside channel of programming from V-me Media, Inc. ("V-me"), over which EBC exercises ultimate editorial control, fully comply with the Commission's rules. EBC is submitting this letter to correct certain factual errors raised for the first time in HITN's Reply Comment so that the record before the Commission is accurate and complete.

*Nuestro Barrio*. HITN alleges that the V-me program *Nuestro Barrio* "has a commercial element."<sup>1</sup> In support, HITN claims that "V-me is regularly airing within *Nuestro Barrio* a 30-second Chase Manhattan Bank Spanish-language commercial spot."<sup>2</sup> This assertion is incorrect. Contrary to HITN's claims, the *Nuestro Barrio* feed that is provided to EchoStar does not contain the Chase Manhattan Bank underwriting announcement. As EBC has explained, V-me is distributed nationally via DBS and locally pursuant to affiliation agreements with dozens of noncommercial educational television licensees. These local affiliates are entitled to substitute local interstitials, underwriting and Spanish-language programming within, or in place of, V-me material.<sup>3</sup> EBC inserts

<sup>1</sup> HITN Reply Comment at 12.

<sup>2</sup> *Id.*

<sup>3</sup> EBC Comments at 10.

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the announcement in its *local over-the-air* broadcasts of V-me programming, as, apparently, do other NCE television affiliates, according to the press release cited by HITN.<sup>4</sup>

HITN also alleges that the producer of *Nuestro Barrio* solicits requests from third parties for “product placement or commercial spots.”<sup>5</sup> EBC has never received a report of any such sponsorship from the producers of *Nuestro Barrio*, as would be required, if it occurred, by Section 507 of the Communications Act, nor has it received any such notice from V-me. EBC does not carry programming without appropriate disclosures and acknowledgements consistent with federal law and FCC regulations. Rather than the conclusion implied by HITN, it is likely that the producers of *Nuestro Barrio* are simply exploring the feasibility of producing a separate commercial variant of the program, which would not be distributed on V-me’s noncommercial program service. This would hardly be the first program on public television that appeared in commercial form, *e.g.*, *This Old House*.

*EBC’s Editorial Control of V-me Programming.* HITN claims that V-me Media, Inc., and not EBC, possesses “near absolute control” of program content.<sup>6</sup> Again, HITN misstates or ignores the facts. EBC exerts its ultimate control of V-me’s programming in myriad ways. EBC plays a key role in selecting and approving V-me’s executives (among them former EBC employees), enjoys significant rights as a 20% shareholder, delivers to V-me substantial quantities of EBC-produced content, and, most importantly, controls one-third of the company’s board of directors with the power to veto programming that EBC, in its sole discretion, concludes to be contrary to the standards for public broadcasting.<sup>7</sup> V-me currently has an interim board that consists of Dr. William F. Baker, EBC’s Chief Executive Officer since 1987; Mario L. Baeza, representing the Baeza Group, and who is also a member of the Board of Trustees of EBC; and Terry L. Jones, representing Syncom Funds. The board may increase to up to nine members, three of which must be designated by EBC, and a fourth who must be an independent director acceptable to EBC.<sup>8</sup> As HITN acknowledges, upon an increase in the size of the board, a majority of the EBC-appointed

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<sup>4</sup> Prior to airing the material, EBC reviewed the Chase Manhattan Bank announcement pursuant to its standard procedures and concluded that the spot complies in all respects with the Commission’s rules for underwriting. In any event, the issue is irrelevant to this proceeding, as the underwriting announcement is not included within the programming provided by EBC to the DBS services.

<sup>5</sup> HITN Reply Comment at 12.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> EBC Opposition at 7-9.

<sup>8</sup> *Id.* at 8. Moreover, the private investors have no ability to remove or replace a director designated by EBC. *Id.*



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directors have the unilateral right to veto proposed programming.<sup>9</sup> Until the size of the board is increased, EBC's current member of the interim board enjoys and exercises all the rights granted under the agreement to the EBC-designated board members, including the right to veto programming.

Respectfully submitted,

EDUCATIONAL BROADCASTING CORPORATION

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<sup>9</sup> HITN Reply Comment at 9.